

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 915 of 1998

DATE: 25-04-2007

Between :

Nakka Veeranna

... Petitioner

And

Mandal Revenue Officer,
Razole, East Godavari District and another.

... Respondents

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 915 of 1998

ORDER:

This writ petition is filed seeking a declaration that the order passed by the first respondent-Mandal Revenue Officer, Razole dated 25-12-1997 is arbitrary and illegal and for a consequential direction to the respondents not to dispossess the petitioner from the land in his occupation to an extent of Ac.1.00 in R.S.No.767/16 and R.S.No.767/17 of Sivakodu village, Razole Mandal, East Godavari District.

The petitioner claims to be a landless poor person belonging to Scheduled caste. It is stated that the land to an extent of Ac.1.00 situated in R.S.No.767/16 and 17 was initially in possession of one I. Tirupathi, who died issueless. The brother of the said I.Tirupathi by name I.Yesubabu being the only legal heir continued in possession and enjoyment of the said land. During the lifetime of I.Tirupathi itself, the said land was leased out to the petitioner, who having made the same fit for cultivation raised a coconut garden. That apart, after the death of the original lessor, his legal heir I.Yesubabu executed a further lease deed dated 27-05-1984 in favour of the petitioner for a period of 99 years. Thus, the petitioner has been in continuous possession and enjoyment of the land in question for the past more than 30 years.

While so, on the basis of a complaint made by one I.Lakshamma, wife of I.Yesubabu a notice dated 21-10-1997 under Rule 3 of Rules made under Andhra Pradesh Assigned Land (Prohibition of transfer) Act, (Act 9 of 1977) (for short 'the Act') was

served on the petitioner calling upon him to show cause as to why he should not be evicted from the land in question alleging that the land in question is an assigned land and the transfer in his favour is in violation of the provisions of Act. The petitioner submitted his explanation denying the allegations and explaining that he has been in possession and enjoyment of the land under a valid lease deed. However, the first respondent-Mandal Revenue Officer passed the impugned order dated 25-12-1997 directing resumption of the land in question to the Government under Section 4(1) of the Act after evicting the petitioner. Aggrieved by the same, this writ petition is filed.

In the counter affidavit filed on behalf of the respondents, it is stated that the writ petitioner is financially sound and his claim that he is a landless poor person is incorrect. It is contended that it is an assigned land and since the assignee died intestate, the occupation of I.Yesubabu, who is not related to the original assignee is unauthorized and consequently, the transfer in favour of the petitioner under the so called lease is also illegal. Hence, the impugned order directing resumption of the land to the Government is in accordance with law and does not warrant any interference.

I have heard the learned counsel for both the parties.

At the outset it is to be noted that the claim of the respondents that the land was assigned in favour of I.Tirupathi itself was not borne out of record. The material on record shows that what was granted in favour of I.Tirupathi was only a lease and the same was renewed up to 1982. The lease was admittedly subsisting till his death. Whereas the petitioner claimed that he was granted a sublease during the life time of the lessee

I.Tirupathi, it is alleged by the respondents that on the death of the original lessee his brother Yesubabu had occupied the land in question and he had subleased the same for 99 years in favour of the writ petitioner. Thus, in the impugned order it was concluded that

since the lease in favour of the original lessee Tirupathi expired on 30-06-1982, the possession of Yesubabu claiming to be the brother of the original lessee was unauthorized and illegal and therefore no title was passed on to the petitioner.

Even assuming that the version of the respondents that the lease in favour of the original lessee expired on 30-06-1982 itself and the petitioner having come into possession of the land much thereafter, did not acquire valid title is correct, the question is whether the impugned order passed by the first respondent directing resumption of the land to the Government under Section 4(1) of the Act is valid.

Section 2(1) of the Act defines assigned land as lands assigned by the Government to the landless poor persons under the Rules for the time being in force, subject to the condition of non-alienation which includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings.

Section 3 of the Act prohibits transfer of such assigned land either by sale, gift, lease, mortgage, exchange or otherwise. Sub-section (3) of Section 3 made it clear that any transfer or acquisition made in contravention of the provisions of the Act shall be deemed to be null and void.

Section 4 of the Act, which provides for consequences of breach of provisions of Section 3, empowered the District Collector or any other Officer not below the rank of Mandal Revenue Officer to take possession of the assigned land which had been transferred in contravention of Section 3(1) of the Act after evicting the person in possession and restore the same to the original assignee or his legal heir. In case, it is not practicable to restore the land to such assignee or legal heir, the land should be resumed to the Government for assignment to landless poor persons.

Thus it is clear that the Act is applicable only to those lands, which were assigned to a landless poor person under the relevant law

for the time being in force and where such assignment was subject to the condition of non-alienation.

In the instant case, even according to the version of the respondents the land in question was not assigned to I.Tirupathi under any Rules providing for such assignment, but he was only granted a lease, which was valid up to 30-06-1982. Thus the land in question does not satisfy the definition of assigned land. In the circumstances, even assuming that after the expiry of the lease in favour of Tirupathi on 30-06-1982, there was no renewal, the persons who came into possession of the land thereafter can only be treated as encroachers and consequently the transfer in favour of the petitioner, even assuming to be unauthorized and illegal does not attract the prohibition contemplated under the Act. Hence, the impugned order, which was passed under Section 4(1) of the Act, on the face of it is without jurisdiction and liable to be set aside on that ground alone.

Accordingly, the impugned order dated 25-12-1997 is set aside. However, this shall not preclude the respondents to initiate fresh proceedings in accordance with law either under the Land Encroachment Act or any other appropriate statute for recovery of the land in question from the petitioner.

The writ petition is accordingly disposed of. No costs.

G. ROHINI, J

Date: 25-04-2007
KLP